



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0105; FRL-10012-12-Region 4]

Air Plan Approval; Florida: Public Notice Procedures for Minor Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve portions of a State Implementation Plan (SIP) revision submitted by the State of Florida, through the Florida Department of Environmental Protection (FDEP), on February 27, 2013. These portions change the State's public notice and comment rule for air permitting by modifying the length of the public comment period for minor source operating permitting and by making non-substantive edits.

DATES: This rule is effective [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2017-0105. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via www.regulations.gov, or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Akers can be reached via telephone at (404) 562-9089 or via electronic mail at akers.brad@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to the Florida SIP that were provided to EPA through FDEP via a letter dated February 27, 2013.¹ EPA has previously approved portions of the February 27, 2013 submittal,² and FDEP has withdrawn other portions from EPA consideration.³ EPA is approving the remaining portions of this SIP revision. These remaining portions make changes to Rule 62-210.350, Florida Administrative Code (F.A.C.), *Public Notice and Comment*, by revising the length of the public notice period required for federally enforceable state operating permits (FESOPs) from 30 days to 14 days and making several minor non-substantive edits to

¹ EPA received the submittal on March 6, 2013.

² EPA approved portions of the February 27, 2013, SIP revision making changes to Rule 62-210.200, *Definitions*, 62-210.310, *Air General Permits*, and portions of 62-210.350, *Public Notice and Comment*, specifically portions of 62-210.350(1) and (4), on October 6, 2017 (82 FR 46682).

³ FDEP withdrew portions of the February 27, 2013, SIP revision as follows: FDEP withdrew certain changes to Rule 62-210.200, *Definitions*, Rule 62-210.350, *Public Notice and Comment*, and Rule 62-296.401, *Incinerators*, on June 28, 2017; and FDEP withdrew the changes to 62-210.300, *Permits Required*, on December 5, 2019. These letters are located in the docket for this rulemaking.

the Rule. FESOPs are federally enforceable permits issued by a state under a minor source operating permit program that EPA has approved into the SIP as meeting criteria published by the Agency on June 28, 1989. *See* 54 FR 27274 (June 28, 1989) (hereinafter FESOP Guidance). *See* EPA's May 5, 2020, notice of proposed rulemaking (NPRM) (85 FR 26641) for further details on these changes and EPA's rationale for approving them.

Comments on the NPRM were due on or before June 4, 2020, and EPA received one comment. EPA has summarized this comment and is providing a response in the following section. The complete comment is available in the docket for this rulemaking.

II. Response to Comment

Comment: The Commenter requests that EPA confirm that the 14-day comment period at Rule 62-210.350 for FESOP minor source permits will not be followed if the minor source permit is going to be used for SIP purposes. The Commenter further states that should such a FESOP minor source permit need to be approved into the SIP, EPA must clarify that a 30-day public comment period is required.

Response: The 14-day comment period in Rule 62-210.350 applies to the issuance of all FESOPs regardless of whether the State will ultimately submit them to EPA for incorporation into the SIP. As discussed in the NPRM, there are no specific public notice requirements for the issuance of minor source operating permits in the Clean Air Act (CAA) or implementing regulations, and Florida's rule complies with EPA's FESOP Guidance. The Commenter does not challenge this rationale for approving the SIP revision or explain why FESOPs submitted for SIP purposes must undergo a 30-day comment period prior to issuance.⁴

⁴ As discussed in the NPRM, even with the revision to Rule 62.210.350, the State may provide for a longer comment period on FESOPs when a commenter requests an extension.

Nonetheless, all SIP submittals, including those that contain permit conditions for incorporation into the SIP, must undergo a 30-day public comment period at the state level pursuant to CAA Section 110(a), 40 CFR 51.102, and Appendix V to 40 CFR Part 51, *Criteria for Determining the Completeness of Plan Submissions*. This comment period is separate from and in addition to the comment period on any permits included in that submittal. Furthermore, EPA must provide for public comment when proposing to approve a SIP submittal unless, for good cause, it finds that a public comment period is impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 553. The public therefore has ample opportunity to submit comments on a SIP submittal. If the submittal seeks to incorporate permit conditions into the SIP, the public can comment during the state and federal public comment periods regarding the sufficiency of those conditions for SIP purposes.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Rule 62-210.350, F.A.C., *Public Notice and Comment*, state effective October 12, 2008, consisting of changes to the public comment period regarding FESOPs as well as non-substantive edits.⁵ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final

⁵ Except for 62-210.350(1)(c) which was withdrawn from EPA consideration on June 28, 2017.

rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁶

IV. Final Action

EPA is approving changes to the Florida SIP included in a February 27, 2013, submittal. Specifically, EPA is approving changes to the public comment period regarding FESOPs, as well as non-substantive edits, in Rule 62-210.350, F.A.C., *Public Notice and Comment*, state effective October 12, 2008. EPA is approving these changes because they are not inconsistent with the FESOP Guidance or the CAA, and because the changes will not interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirements in the Act.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

⁶ *See* 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 15, 2020.

Mary Walker

Regional Administrator,
Region 4.

Therefore, for the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K - Florida

2. In § 52.520 amend the table in paragraph (c) by revising the entry for “62-210.350” to read as follows:

§52.520 Identification of plan.

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(c) * * *

EPA APPROVED FLORIDA REGULATIONS

State citation (section)	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 62-210 Stationary Sources—General Requirements				
**	**	*	*	*
62-210.350	Public Notice and Comment	10/12/2008	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	Except for 62- 210.350(1)(c) which was withdrawn from EPA consideration on June 28, 2017.
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[FR Doc. 2020-15700 Filed: 7/28/2020 8:45 am; Publication Date: 7/29/2020]